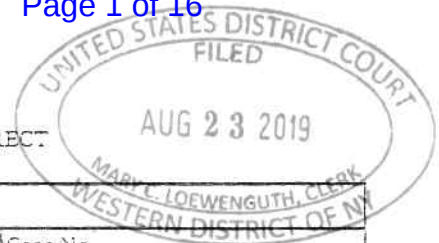


AO 243 (Rev. 2/95)

MOTION UNDER 28 USC § 2255 TO VACATE, SET ASIDE, OR CORRECT
SENTENCE BY A PERSON IN FEDERAL CUSTODY

United States District Court		District
Name of Movant: LAWRENCE RUSSELL	Prisoner No. #27413-055	Case No. 18-CR-40-V/17-CR-
Place of Confinement: BUTNER FEDERAL CORRECTIONAL INSTITUTION		

UNITED STATES OF AMERICA	v.	LAWRENCE RUSSELL <small>(name under which convicted)</small>
--------------------------	----	--

MOTION

1. Name and location of court which entered the judgment of conviction under attack: **United States District Court/Western Of New York/Buffalo Division**
2. Date of judgment of conviction: **February 25, 2019.**
3. Length of sentence: **108-months/9-years**
4. Nature of offense involved (all counts): **Conspiracy To posses with intent to distribute, and to distribute, 500 grams or more of cocaine and 28-grams or more of cocaine base. Violating 21 U.S.C. §846 and 841. Count1, Failure to appear. Violating 18 U.S.C. § 3146(a)(1).**
5. What was your plea? (Check one)

(a) Not guilty	<input type="checkbox"/>
(b) Guilty	<input checked="" type="checkbox"/>
(c) Nolo contendere	<input type="checkbox"/>

If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details:

Petitioner, plead guilty to each count listed in the indictment due to the erroneous misadvice of trial counsel. Who failed to clearly go over each aspect of the written plea agreement.
6. If you pleaded not guilty, what kind of trial did you have? (Check one)

(a) Jury	<input type="checkbox"/>
(b) Judge only	<input checked="" type="checkbox"/>
7. Did you testify at the trial?

Yes	<input type="checkbox"/>	No	<input checked="" type="checkbox"/>	But I will truthfully testify now!
-----	--------------------------	----	-------------------------------------	---
8. Did you appeal from the judgment of conviction?

Yes	<input type="checkbox"/>	No	<input checked="" type="checkbox"/>	No due to Ineffective Assistance Of Counsel.
-----	--------------------------	----	-------------------------------------	---

AO 247 (Rev. 3/95)

9. If you did appeal, answer the following:

- (a) Name of court N/A
- (b) Result N/A
- (c) Date of result N/A

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any federal court?

Yes ☐ No ☒

11. If your answer to 10 was "yes," give the following information:

- (a) (1) Name of court N/A
- (2) Nature of proceeding N/A
- (3) Grounds raised N/A
- N/A
- N/A
- N/A
- N/A

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐ No ☒

- (5) Result N/A
- (6) Date of result N/A

(b) As to any second petition, application or motion give the same information:

- (1) Name of court N/A
- (2) Name of proceeding N/A
- (3) Grounds raised N/A
- N/A
- N/A
- N/A
- N/A

AO 243 (Rev. 2/95)

(4) Did you receive an evidentiary hearing on your petition, application or motion?
 Yes ☐ No ☒

(5) Result N/A

(6) Date of result N/A

(c) Did you appeal, to an appellate federal court having jurisdiction, the result of action taken on any petition, application or motion?

(1) First petition, etc. Yes ☐ No ☒

(2) Second petition, etc. Yes ☐ No ☒

(d) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

N/A

N/A

N/A

N/A

N/A

N/A

N/A

N/A

N/A

N/A

N/A

N/A

12. State *concisely* every ground on which you claim that you are being held in violation of the constitution, laws or treaties of the United States. Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating additional grounds and facts supporting same.

CAUTION: If you fail to set forth all grounds in this motion, you may be barred from presenting additional grounds at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in these proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you have other than those listed. However, you should raise in this motion all available grounds (relating to this conviction) on which you based your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The motion will be returned to you if you merely check (a) through (j) or any one of these grounds.

- (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily or with understanding of the nature of the charge and the consequences of the plea.
 (b) Conviction obtained by use of coerced confession.

AO 24: (Rev. 2/95)

- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

A. Ground one: Ineffective Assistance of counsel for failing to file a timely Notice Of Appeal. Petitioner, "instructed counsel to file said appeal"

Supporting FACTS (state *briefly* without citing cases or law): Trial counsel was ineffective violating Petitioner's 5th and 6th Amendment Federal Constitutional Right's To The effective assistance of counsel. Specifically, on February 8, 2019. Petitioner, instructed counsel to file an appeal on his behalf and Counsel Mr. Mark A. Foti, agreed to file an appeal, but through neglect counsel failed to do so. [See Memorandum Of Law].

B. Ground two: Ineffective Assistance of counsel for failing to object to the dangerous weapon enhancement under U.S.S.G. §2D1.1(b)(1).

Supporting FACTS (state *briefly* without citing cases or law): Trial counsel was ineffective violating Petitioner's 5th and 6th Amendment Federal Constitutional Right's To the effective assistance of counsel. Specifically, trial counsel deliberately failed to "object" to the dangerous weapon enhancement under U.S.S.G. §2D1.1(b)(1). The Government failed to show that the firearm had some purpose or effect with the drug trafficking crime. [See Memorandum Of Law]

C. Ground three: N/A

N/A

Supporting FACTS (state *briefly* without citing cases or law):

N/A

N/A

N/A

N/A

N/A

AC 243 (Rev. 2/95)

N/AN/AD. Ground four: N/AN/ASupporting FACTS (state *briefly* without citing cases or law): N/AN/AN/AN/AN/AN/AN/A13. If any of the grounds listed in 12A, B, C, and D were not previously presented, state briefly what grounds were not so presented, and give your reasons for not presenting them: N/AN/AN/AN/AN/A

14. Do you have any petition or appeal now pending in any court as to the judgment under attack?

Yes ☐ No ☒


15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing Mark A. Foti16 West Main Street/Suite-236. Rochester, New York 14614.(b) At arraignment and plea Mark A. Foti.Same as above(c) At trial Mark A. Foti.Same as above(d) At sentencing Mark A. FotiSame as above.

AO 243 (Rev. 3/95)

- (e) On appeal N/A
N/A
- (f) In any post-conviction proceeding Petitioner, presents this §2255-motion in proper
person without the assistance of counsel.
- (g) On appeal from any adverse ruling in a post-conviction proceeding N/A
N/A
16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at approximately the same time?
 Yes ☐ No ☒
17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?
 Yes ☐ No ☒
- (a) If so, give name and location of court which imposed sentence to be served in the future: N/A
N/A
N/A
- (b) Give date and length of the above sentence: N/A
N/A
- (c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?
 Yes ☐ No ☒

Wherefore, movant prays that the Court grant him all relief to which he may be entitled in this proceeding.
(GRANT) both issue's raised herein or hold an evidentiary hearing
 Due to counsels ineffective representation.


 Signature of Attorney (if any)
 Lawrence Russell
 #27413-055/LC-90U

I declare under penalty of perjury that the foregoing is true and correct. Executed on

8-20-19


Date


 Signature of Movant
 Lawrence Russell
 #27413-055/LC-90U

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that a true and correct copy of the foregoing has been furnished by US Mail TO: Ms. Laura Higgins (AUSA) @ U.S. Attorney's Office/Federal Centre. 138 Delaware Avenue. Buffalo, New York 14202. On this 20th, day of AUGUST, 2019. I on this same date did place this into the hands of prison officials for legal mailing. See, Houston v Lack, 487 U.S. 266 (1988).

Respectfully Submitted


Lawrence Russell
#27413-055/LC-90U
Federal Correctional Inst.
Butner-Medium II
Post Office Box 1500
Butner, North Carolina 27509-1500.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK
BUFFALO DIVISION

LAWRENCE RUSSELL
Petitioner/Plaintiff

vs.

UNITED STATES OF AMERICA
Defendant/Respondent

CIVIL NO: _____
Case Nos. 18-CR-40-V
17-CR-105-V

MEMORANDUM OF LAW IN SUPPORT OF 28 U.S.C. §2255
MOTION TO VACATE SET ASIDE OR CORRECT SENTENCE

COMES NOW, The Petitioner, Lawrence Russell, in proper person, and pursuant to the Rules Governing § 2255-Proceedings For The United States District Court's 2(c). Respectfully, moves this Honorable Court with this Memorandum Of Law In Support of 28 U.S. C. §2255-Motion To Vacate Set Aside Or Correct Sentence. Petitioner, avers to the following fact's.

GROUND ONE

1) In ("Ground One"), Petitioner asserts that trial counsel was Constitutionally Ineffective violating Petitioner's 5th, And 6th Amendment Federal Constitutional Right's to the effective assistance of counsel. Specifically, on February 8, 2019. Petitioner, instructed his trial attorney (Mr. Mark A. Foti).

2) To file an appeal, (Mr. Foti), agreed to file an appeal on Petitioner's behalf, but through neglect he failed to do so as Petitioner, instructed him to do. [A] lawyer who disregards specific instructions from the defendant to file a notice of appeal acts in manner that is professionally unreasonable.

3) See, Campusano v United States, 442 F.3d 770 (2d Cir.2006);

Also see, Roe v Flores-Ortega, 528 U.S. 470-77 (2000). A defendant claiming ineffective assistance must (1) demonstrate that his counsel's performance fell below an objective standard of reasonableness in light of prevailing professional norms, and (2) affirmatively prove prejudice.

4) Form counsel's allegedly deficient representation. See to, United States v Cohen, 427 F.3d 164-67 (2d Cir. 2005); Strickland v Washington, 466 U.S. 668, 688, 693, 104 S.Ct. 2052 (1984). Also see, Rodriguez v United States, 395 U.S. 327, 89 S.Ct. 1715 (1969) Where the Supreme Court explained that;

When counsel's constitutionally deficient performance deprives a defendant of an appeal that he otherwise would have taken, the defendant has made out a successful ineffective assistance of counsel claim entitling him to an appeal.

5) In Campusano v United States, 442 F.3d at 775. The Court, explained in part;

Evan if a client signed a plea agreement waiving his appellant right's where counsel does not file a requested notice of appeal and fails to file an adequate Anders brief courts may not dismiss the hypothetical appeal as frivolous on collateral review.

Petitioner, mailed several letters to the US Probation Office, and to this Honorable Court expressing the lack of communication from counsel and his many concerns about several paragraphs in the Presentencing Investigation Report to no avail. Trial Counsel, deliberately failed to explain exactly how the US sentencing guidelines affected Petitioner. By placing the US sentencing guidelines into the plea agreement, Petitioner would prematurely waive his objections at sentencing without any accurate evaluation of the Presentencing Report. Thus, Petitioner would be effectively waiving his right to object when several portions of the Presentencing Report now have an impact on Petitioner's current sentence. See, Fed. R. Crim. P. 32(i)(3) (C). In addition, the US sentencing guidelines are discretionary not mandatory, they have no place inside of a plea agreement, counsel did not have Petitioner's best interest at the time. Petitioner, can clearly and accurately describe several portions of the Presentencing Report that are factually incorrect and counsel failed to take an pro active step too ensure Petitioner's 5th & 6th Amendment Right's were not violated.

6) To raise a claim despite a guilty plea or appeal waiver the Petitioner, must show that the plea agreement was not knowing and voluntary. See, Parisi v United States, 529 F.3d 134-38 (2d Cir. 2008). The Second Circuit, has held that there are instances where a Petitioner, may appeal or collaterally attack.

7) A conviction notwithstanding a waiver, including the defendant's right to appeal on the grounds of ineffective assistance of counsel. See, United States v Rosa, 123 F.3d 94-98 (2d Cir. 1997). However, in those circumstances the petitioner challenges counsels assistance in entering the plea.

8) Also, petitioner challenges counsels conduct at sentencing as well. See eg, United States v Hernandez, 242 F.3d 110-14 (2d Cir. 2001). Where the Circuit Court explained in part;

[T]he refusal to apply such a waiver provision in those circumstances only allows appellate review of the constitutionality of the process by which the plea agreement was consummated.

9) Also see, United States v torres, 129 F.3d 710-16 (2d Cir. 1997). The Second Circuit, went further explaining that;

A defendant who pleads guilty unconditionally while represented by counsel may not assert independent claims relating to the deprivation of constitutional right's that occurred prior to the entry of the guilty plea. Rather, a defendant may only attack the voluntary and intelligent character of the guilty plea by showing that the advice he received from counsel was not within acceptable standards.

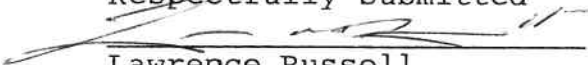
10) Petitioner, specifically "asserts" that he instructed his trial attorney, on February 8, 2019. To file a timely notice of appeal, Counsel had "agreed" to file said appeal, but through neglect he failed to do so, as instructed by Petitioner. Thus, counsel is Constitutionally Ineffective.

11) Petitioner, has complied with the holding's from the US Supreme Court. See, Strickland v Washington, 466 U.S. 668,688, 693, 104 S.Ct. 2052 (1984); Roe v Flores-Ortega, 528 U.S. 470-77 (2000).

NATURE OF THE RELIEF SOUGHT

Petitioner, prays that this Honorable Court (**GRANT**), this Motion To Vacate Set Aside Or Correct Sentence under 28 U.S.C. §2255. In light of, Garzo v Idaho, 139 S.Ct. 738 (2019). The attached..., sworn affidavits support that trial counsel was constitutionally ineffective for failing to file a timely notice of appeal as he was instructed to do by Petitioner. In the alternative, Petitioner, prays that this Court hold an evidentiary hearing where Petitioner, will prove counsel's ineffective assistance.

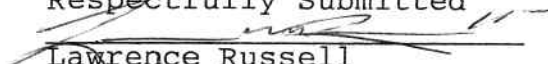
Respectfully Submitted


Lawrence Russell
#27413-055/LC-90U
Federal Correctional Inst.
Butner-Medium II
Post Office Box 1500
Butner, North Carolina 27509-1500.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that a true and correct copy of the foregoing has been furnished by US Mail TO: **Laura Higgins** (AUSA) @ U.S. Attorney's Office/Federal Centre. 138 Delaware Avenue. Buffalo, New York 14202. On this 20th, day of AUGUST, 2019. I on this same date did place this into the hands of prison officials for legal mailing. Houston v Lack, 487 U.S. 266 (1988).

Respectfully Submitted


Lawrence Russell
#27413-055/LC-90U
Federal Correctional Inst.
Butner-Medium II
Post Office Box 1500
Butner, North Carolina 27509-1500

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK
BUFFALO DIVISION

LAWRENCE RUSSELL
Petitioner/Plaintiff

Case Nos. 18-CR-40-V
17-CR-105-V

vs.

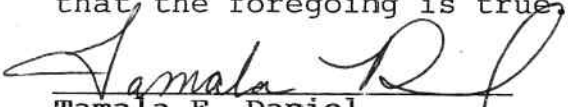
UNITED STATES OF AMERICA
Defendant/Respondent

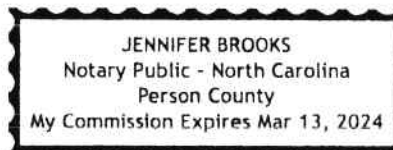
AFFIDAVIT OF TAMALA E. DANIEL

I Tamala E. Daniel, hereby state that on Tuesday February 12, 2019. I called the Law Office Of Mr. Mark A. Foti @ (585) 461-1999. I spoke with a female that answered the telephone. I asked her can I please speak with Mr. Foti?? she responded to me saying, "He's in court right now, can I take a message?"

2) I said yes, and I explained to her, "that I'm Mr. Lawrence Russells f'iance and I wanted to know has Mr. Foti, filed the appeal as of yet, and if not he should file it immediately." She said that she would let him know as soon as he returns from court.

I Declare (or certify, verify or state), under the penalty of perjury that the foregoing is true. See, 28 U.S.C. § 1746.


Tamala E. Daniel
(919) 514-9191
517 North Lamar Street
Rocxboro, North Carolina
27573.



8/14/19
Date

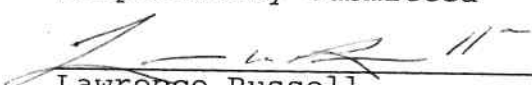


Jennifer Brooks notary for Tamala E. Daniel
8/14/19

DECLARATION IN COMPLIANCE WITH 28 U.S.C. § 1746
CERTIFICATE OF SERVICE

I Declare (or certify, verify or state) under the penalty of perjury that the foregoing was deposited to the Institutional Mail Room For Legal Mailing. @ Federal Correctional Institution/Butner. P.O. Box 1500. Butner, North Carolina 27509-1500. And-First Class postage has been prepaid. See, Rules Governing §2255 Proceedings For The United States District Court 3(d). I Hereby Certify that a true and correct copy of the foregoing has been furnished by U.S. Mail TO: Laura Higgins (AUSA) @ U.S. Attorney's Office/Federal Centre. 138 Delaware Avenue. Buffalo, New York 14202. On this 20th, day of AUGUST, 2019. I on this same date did place this documentation into the hands of prison officials for legal mailing. See, Houston v Lack, 487 U.S.266 (1988).

Respectfully Submitted



Lawrence Russell
#27413-055/LC-90U
Federal Correctional Inst.
Butner-Medium II
Post Office Box 1500
Butner, North Carolina 27509-1500.

Date: 8-26-19
Clerk Of U.S District Court
US Courthouse
2 Niagara Square
Buffalo, New York 14202-3350

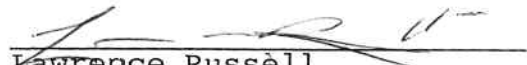
RE: Russell v United States
Case Nos. 18-CR-40-V
17-CR-105-V

NOTICE TO THE CLERK OF THE DISTRICT COURT

Dear Clerk,

Enclosed please find my "28 U.S.C. §2255-motion." Will you notify me once you have received this documentation. Your time and consideration are both very much appreciated.

Respectfully Submitted


Lawrence Russell
#27413-055/LC-90U
Federal Correctional Inst.
Butner-Medium II
Post Office Box 1500
Butner, North Carolina 27509-1500.



1000



14202

Mr. Lawrence Rus
#27413-055/LC-90
Federal Correctional
Butner-Medium II
Post Office Box
Butner, North Carolina

TO:

Clerk Of The U.S.
United States Court
2 Niagara Square
Buffalo, New York

Legal Mail

POSTAGE PAID
M LG ENV
JTNER, NC
509
JG 20, 19
MOUNT
\$0.00
12305K140899-05



sell
U
onal Institution
1500
rolina 27509-1500.

. District Court
urthouse
k 14202-3350.

12305K140899-05